The Huntington National Bank
Legal Department
Huntington Center
41 South High Street
Columbus, Ohio 43287

March 31, 2010

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Attn: Docket Number R-1343

Re: Proposed Rule Regarding Further Clarification for Overdraft Practices
75 FR 9120 (March 1, 2010)

Dear Ms. Johnson:

This letter is submitted on behalf of The Huntington National Bank ("Huntington Bank")[1] in response to the above-referenced rule proposed by the Board of Governors of the Federal Reserve System (the "Board") with respect to clarification of certain matters arising from the Board's final rule on overdraft practices under Regulation E published on November 17, 2009. We appreciate the opportunity to provide the comments set forth below with respect to the proposed rule.

Changes to §205.17(b)(4)

With respect to §205.17(b)(4), we recommend modifying the second sentence of the Board's proposed revision to add the following: ". . . if it does not assess overdraft fees <u>for paying ATM or one-time debit card transactions that overdraw the consumer's account</u>." (Underlining indicates recommended additional text.) Otherwise, this provision as proposed to be revised by the Board could be interpreted in a way that conflicts with §205.17(b)(1). In §205.17(b)(1) it is clear the notice and opt-in and other requirements of that provision apply only if overdraft fees are charged for ATM or one-time debit card transactions (such transactions

---

[1] The Huntington National Bank ("Huntington Bank") is a national bank and the principal subsidiary of Huntington Bancshares Incorporated, which is a $53 billion regional bank holding company headquartered in Columbus, Ohio. Huntington Bank has more than 143 years of serving the financial needs of its customers, and has more than 600 banking offices in Indiana, Kentucky, Michigan, Ohio, Pennsylvania and West Virginia.

referred to hereinafter as "covered transactions") that overdraw the consumer's account. Additionally, it is not clear the last sentence of the proposed revised §205.17(b)(4) is necessary, and leaving it in could create confusion and presumably unintended liability for financial institutions. If a financial institution does not charge overdraft fees on any given account for covered transactions that overdraw the account, then there should be no obligation to comply with the disclosures and other procedures of §205.17(b)(1), whether with respect to a single account or a type of account. Leaving this sentence in appears to suggest a financial institution could be liable for failing to comply with the disclosures and other procedures of §205.17(b)(1) on a given account even though no overdraft fees were charged on that account for covered transaction overdrafts. Thus, we recommend this last sentence be deleted.

Confirmation Notice

We agree with the Board's proposed Commentary change to comment 17(b)-7 to the extent it is intended to clarify that the charging of overdraft fees for a consumer who opts in does not require either (i) waiting for a period of time after the confirmation is sent or (ii) obtaining some form of confirmation that the consumer had received the confirmation. Having to wait some period of time or confirm receipt would simply be adding additional requirements which would be excessive.

However, the new text added to comment 17(b)-7, by stating that an institution may not assess overdraft fees until the institution has sent the written confirmation, potentially conflicts with §205.17(b)(1)(iv) which permits the confirmation notice to be provided in writing or electronically. To avoid this problem, we recommend modifying the first sentence of this new Commentary text as follows: ". . . until the institution has sent the ~~written~~ confirmation in writing or electronically." Then the word "written" should be deleted from the second sentence of the new Commentary text. We do not believe the Board intended this new Commentary text to limit the ability to provide the confirmation electronically.

Additionally, we believe consumers would be provided more flexibility if the institution was permitted to charge overdraft fees starting the day the consumer opts in, as long as the confirmation notice is sent to the consumer by the end of the next business day. That would allow a consumer whose account was overdrawn, but who had already been provided with the overdraft disclosure notice required by §205.17(b)(1)(i), to obtain cash at an ATM in an emergency, for example, if the institution provided the opportunity to opt in at the ATM before making the cash available. The soonest the institution could reasonably send the confirmation if sent by mail would be the next business day, since the confirmations would most likely be batched to print the night of opt-in and be mailed the following morning.

Opt In by Telephone

We recommend the Board also clarify that if the customer opts in by telephone—either in a conversation with a representative of the financial institution or through a telephone voice response unit—the institution should be permitted to send the notice required by §205.17(b)(1)(i) (the "overdraft disclosure notice") along with, and at the same time as, the confirmation notice, as long as the overdraft disclosure notice is sent within 10 business days after the consumer opts in.[2] This would be similar to the provision in Regulation DD which permits account opening disclosures under Regulation DD to be mailed or delivered not more than 10 business days after the account is opened if the consumer is not present at the institution at the time the account is opened (but excluding accounts opened by electronic communication such as using the institution's website). See Regulation DD, §230.4(a)(1).

In the case of consumers who call the institution on the telephone to opt in, it may be difficult for the institution to determine with certainty that the consumer had been sent the overdraft disclosure notice or, after the elapse of time, whether the provision of the overdraft disclosure notice at some earlier time (such as account opening or through a mass mailing campaign) satisfies the general Regulation E requirement that disclosures be provided in "close proximity" to the event requiring disclosure. See Regulation E Official Staff Commentary, comment 7(a)-1. Under the Regulation E overdraft rule, the consumer always has the right to revoke an opt-in. Thus, upon receipt of the overdraft disclosure notice and confirmation within a few days, if the consumer has a change of heart, the consumer can always revoke the opt-in. Providing such a recommended 10-day rule for telephone opt-ins would increase consumer convenience in being able to use the telephone to opt in or opt out,[3] and would provide more compliance certainty for financial institutions when accepting consumer choices over the telephone.

Continuing Overdraft Fee

In the Board's proposed examples relating to continuing overdraft fees, the Board appears to be suggesting an institution needs to use its applicable posting order policies in order to determine whether the balance on which the fee would be assessed is attributable to covered or non-covered transactions. However, an institution's posting order for settling transactions is not relevant to a continuing overdraft fee assessment determination in the way the Board appears to be suggesting in these examples. Here (except for the "Shadow Balance" column) is the Board's example:

---

[2] Since the institution has an incentive to send the confirmation notice as soon as it can in order to allow the institution to start charging overdraft fees, requiring the overdraft disclosure notice to be mailed with the confirmation within 10 days after an opt-in by telephone would also result in the overdraft disclosure notice being sent as soon as it can be.

[3] If an institution determined not to permit opt-in over the telephone because of the uncertainty about being able to know whether the customer had been provided the overdraft disclosure notice before opting in, the institution could also determine not to accept revocation of opt-in over the telephone. But if opt-in over the telephone is encouraged as an option by this recommended 10-day rule, then to the extent financial institutions provide opt-in by telephone, they would also have to provide revocation (or opt-out) as a telephone option as well so as not to risk making revocation or opt-out more difficult than opt-in.

Date	*Transaction*	*Trans Amount*	*Account Balance*	*Shadow Balance*
			50	
3/1	debit card	<60>	<10>	
	check	<40>	<50>	<40>
	check OD fee	<20>	<70>	<60>
3/3	deposit	40	<30>	<20>

The Board's proposed example says the institution allocates the $40 deposit to the debit card transaction first, consistent with its posting order policy, and since the <30> balance can still be attributed to the check and the overdraft fee assessed on the check, a continuing overdraft fee is permitted on that <30> balance. However, attempting to use posting order in this way is not the way posting order works, since posting order does not extend over multiple days. An institution's posting order is what determines the order in which it will pay items that post for settlement today, and that posting order policy is applied to today's transactions. Tomorrow, that posting order policy is applied to tomorrow's transactions. It is not possible to apply the institution's posting order over some combination of days. Thus, the reference to posting order in the Board's examples is confusing.

Where the posting order is relevant to the Board's examples is in establishing a shadow negative balance attributable to non-covered transactions, to which deposits could then first be "applied" to determine the applicability of a continuing overdraft fee. In the above example, whether the bank's posting order was debit card first or high-to-low, the $60 debit card transaction would be posted first on March 1, and thus the first $50 of the debit card transaction would be applied to the existing balance of $50, and <60> of the <70> negative balance would be the shadow negative balance attributable to non-covered transactions. When the $40 deposit is made, it can then for this purpose be "applied" to the shadow balance to reduce it to <20>. If that deposit had been for $60, it would reduce the shadow balance for non-covered transactions to $0, and the continuing overdraft fee would then stop. If instead, the institution's posting order in the Board's examples had been a simple low-to-high, the opposite would be true, and only <10> of the <70> would be attributable to the check and a $10 deposit would then stop the continuing overdraft fee. We note, however, if in the Board's examples the debit card transaction had been the smaller transaction (as they often are), then a low-to-high posting order would leave a higher shadow negative balance attributable to non-covered transactions than would a high-to-low posting order:

Date	*Transaction*	*Trans Amount*	*Account Balance*	*Shadow Balance*
			50	
3/1	debit card	<40>	10	
	check	<60>	<50>	<50>
	check OD fee	<20>	<70>	<70>
3/3	deposit	40	<30>	<30>

It is important to recognize any particular posting order can be more or less advantageous to the consumer depending on the particular set of transactions, and that advantage or disadvantage can vary from one day to the next.

*   *   *

Thank you for the opportunity to provide these comments.

Very truly yours,

Daniel W. Morton
Senior Vice President & Senior Counsel